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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/988,792	11/20/2001	Andrzej W. Lipkowski	18475-025 (NEMC-6)	9119

7590

01/25/2002

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EXAMINER

FORD, VANESSA L

ART UNIT

PAPER NUMBER

1645

DATE MAILED: 01/25/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/988,792

Applicant(s)

LIPKOWSKI ET AL.

Examiner

Vanessa L. Ford

Art Unit

1645

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 27 November 2001.
- 2a) ☐ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-24 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☐ Claim(s) _____ is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☒ Claim(s) 1-24 are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

Election/Restriction

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:

Group I. Claims 1-14 and 24 are drawn to an antimicrobial composition comprising a substance P peptide and kit, classified in class 514, subclass 15. Further sequence election is required.

Group II. Claims 15-19 are drawn to a method of inhibiting growth or survival of a microorganism, classified in class 435, subclass 183.

Group III. Claims 20-23 are drawn to a method of inhibiting a microbial infection, classified in class 424, subclass 78.02.

2. Groups I and (II and III) are related as product and processes of using that product. These inventions can be shown to be distinct if either or both of the following can be shown. (1) the process for using the product as claimed can be practiced with another materially different product or (2) the product as claimed can be used in a materially different process of using that product (MEP 806.05(h)). In the instant case, the antimicrobial composition comprising a P peptide can be used in protein assays.

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3. Groups II and III are drawn to distinct methods which differ in the method objectives, method steps and in reagent used. The claims of Group II are drawn to drawn to a method of inhibiting growth or survival of a microorganism and those of Group III are drawn to a method of inhibiting a microbial infection. The methods are distinct each from the other because they utilize different reagents, have different method steps, have different goal and have different final outcomes.

DISTINCT INVENTIONS

4. Group I, claims 1-14 contains a plurality of disclosed patentably distinct inventions with distinct SEQ.ID.NOS. 1, 2, 12 and 13. Applicant is advised to elect one SEQ.ID.NO from the above group of inventions. Applicant is required under 35 U.S.C. 121 to elect a single disclosed SEQ.ID.NO. The species of Group I are drawn to an amino acid molecule, which contain amino acids and are structurally distinct each from the other.

5. Because these inventions are distinct for the reasons given and have acquired a separate status in the art because of their recognized divergent subject matter as shown by their different classification, restriction for examination purposes as indicated is proper. Moreover, in the absence of restriction it would place an undue search and examination burden on the examiner.

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6. Applicant is advised that the reply to this requirement to be complete must include an election of invention to be examined even though the requirement be traversed (37 CFR 1.143).

7. Applicant is reminded that upon that upon cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 C.F.R. 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a diligently-filed petition under 37 C.F.R. 1.48(b) and by the fee required under 37 C.F.R. 1.17(h).

8. Any inquiry of the general nature or relating to the status of this general application should be directed to the Group receptionist whose telephone number is (703) 308-0196.

Papers relating to this application may be submitted to Technology Center 1600, Group 1640 by facsimile transmission. The faxing of such papers must conform with the notice published in the Office Gazette, 1096 OG 30 (November 15, 1989). Should applicant wish to FAX a response, the current FAX number for the Group 1600 is (703) 308-4242.

Any inquiry concerning this communication from the examiner should be directed to Vanessa L. Ford, whose telephone number is (703) 308-4735. The examiner can normally be reached on Monday – Friday from 7:30 AM to 4:00 PM. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lynette Smith, can be reached at (703) 308-3909.



Vanessa L. Ford
January 16, 2002
Biotechnology Patent Examiner



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TECHNOLOGY CENTER 1600